

Patents (Amendment) Bill

Bill No. 15/2008.

Read the first time on 21st July 2008.

A BILL

intituled

An Act to amend the Patents Act (Chapter 221 of the 2005 Revised Edition).

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1. This Act may be cited as the Patents (Amendment) Act 2008 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

5 Amendment of section 2

2. Section 2(1) of the Patents Act is amended —

(a) by inserting, immediately after the definition of “corresponding patent”, the following definition:

10 ““Council for TRIPS” means the Council for Trade-Related Aspects of Intellectual Property Rights established under the TRIPS Agreement;”;

(b) by inserting, immediately after the definition of “designate”, the following definition:

15 ““Doha Declaration Implementation Decision” means the Decision adopted by the General Council of the World Trade Organisation on 30th August 2003 on the implementation of paragraph 6 of the Declaration on the TRIPS Agreement and Public Health adopted in Doha on 14th November 2001;”;

20 (c) by inserting, immediately after the definition of “relevant authority”, the following definition:

““relevant health product” means a patented invention which is a product referred to in —

25 (a) paragraph 1(a) of the Doha Declaration Implementation Decision; or

(b) paragraph 1(a) of the Annex to the TRIPS Agreement;” and

30 (d) by deleting the full-stop at the end of the definition of “scientific adviser” and substituting a semi-colon, and by inserting immediately thereafter the following definitions:

““TRIPS Agreement” means the Agreement on Trade-Related Aspects of Intellectual Property Rights, set out in Annex 1C to the WTO Agreement, as revised or amended from time to time;

“WTO Agreement” means the World Trade Organisation Agreement signed in Marrakesh in 1994 as revised or amended from time to time.”.

New section 50A

- 5 **3.** The Patents Act is amended by inserting, under Part X immediately before section 51, the following section:

“Application of this Part

50A. This Part shall apply only to —

- (a) any contract for the supply of a patented product;
 10 (b) any licence to work a patented invention; and
 (c) any contract relating to any such supply or licence,

that was entered into or granted on or after 23rd February 1995 but before the date of commencement of section 3 of the Patents (Amendment) Act 2008.”.

Amendment of section 56

- 15 **4.** Section 56 of the Patents Act is amended —

- (a) by deleting the word “provision” in subsection (1) and substituting the word “section”;
 (b) by inserting, immediately after subsection (1), the following
 20 subsection:

“(1A) Without prejudice to the generality of subsection (1), subject to sections 60, 61 and 62, but notwithstanding any other section of this Act, the Government and any party authorised in writing by the Government may import any relevant health product, and do anything in relation to any
 25 relevant health product so imported, for or during a national emergency or other circumstances of extreme urgency, if the Government has given the Council for TRIPS a relevant notification in relation to the relevant health product.”; and

- 30 (c) by deleting subsection (4) and substituting the following subsection:

“(4) In this section —

“integrated circuit” means a product, in its final or an intermediate form, in which the elements, at least one of which is an active element, and some or all of the interconnections are integrally formed in and on, or in or on, a piece of material and which is intended to perform an electronic function;

“relevant notification” means a notification that satisfies the requirements of —

(a) paragraph 2(a) of the Doha Declaration Implementation Decision; or

(b) paragraph 2(a) of the Annex to the TRIPS Agreement.”.

Amendment of section 60

5. Section 60 of the Patents Act is amended —

(a) by inserting, immediately after subsection (1), the following subsection:

“(1A) The right under section 56 to use a relevant health product which is imported under section 56(1A) does not include a right to export the relevant health product.”; and

(b) by inserting, immediately after subsection (2), the following subsection:

“(3) Where the court has terminated the right under section 56 to use a patented invention, the court may make such consequential orders as it thinks necessary.”.

Repeal and re-enactment of section 62

6. Section 62 of the Patents Act is repealed and the following section substituted therefor:

“Patentee entitled to remuneration

62.—(1) Subject to subsection (2), where an act is done under section 56, the Government shall pay such remuneration to the patentee as may be agreed, or as may be determined by a method agreed, between the Government and the patentee having regard to

the economic value of the patented invention or as may, in default of agreement, be determined by the court under section 58.

5 (2) No remuneration shall be payable under subsection (1) in respect of the import or subsequent use under section 56(1A) of any relevant health product, if the patentee has received or will receive any other remuneration in respect of that relevant health product.”.

Amendment of section 66

7. Section 66 of the Patents Act is amended —

10 (a) by deleting the words “subsection (3)” in the 1st line of subsection (2)(g) and substituting the words “subsections (3) and (5A)”;

(b) by inserting, immediately before the words “it consists of” in subsection (2)(i), the words “subject to subsection (5A),”;

15 (c) by inserting, immediately after subsection (5), the following subsection:

“(5A) Subsection (2)(g) and (i) shall not apply to the import or sale of, or the offer to sell, any relevant health product produced for export to any country, other than Singapore, which is an eligible importing member of the World Trade Organisation.”; and

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(d) by deleting subsection (6) and substituting the following subsection:

“(6) In this section —

25 “eligible importing member”, in relation to the World Trade Organisation, means a member of the World Trade Organisation which —

(a) is a least-developed country; or

(b) has given the Council for TRIPS the notification referred to in —

30 (i) paragraph 1(b) of the Doha Declaration Implementation Decision; or

(ii) paragraph 1(b) of the Annex to the TRIPS Agreement;

“exempted aircraft” means an aircraft to which section 5 of the Air Navigation Act (Cap. 6) applies;

“relevant ship” and “relevant aircraft, hovercraft or vehicle” mean, respectively, a ship and an aircraft, a hovercraft or a vehicle registered in, or belonging to, any country, other than Singapore, which is —

(a) a party to the Paris Convention; or

(b) a member of the World Trade Organisation.”.

EXPLANATORY STATEMENT

This Bill seeks to amend the Patents Act (Cap. 221) for the following main purposes:

- (a) to restrict the application of Part X to certain contracts and licences relating to patented products or patented inventions;
- (b) to implement certain measures under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) as amended by the Protocol thereto concluded in Geneva on 6th December 2005 (the Protocol);
- (c) to give effect to the Decision adopted by the General Council of the World Trade Organisation on 30th August 2003 on the implementation of paragraph 6 of the Declaration on the TRIPS Agreement and Public Health adopted in Doha on 14th November 2001 (Doha Declaration Implementation Decision); and
- (d) to expressly empower a court that has terminated a right under section 56 to make such consequential orders as the court thinks necessary.

Clause 1 relates to the short title and commencement.

Clause 2 amends section 2 to insert in subsection (1) new definitions for the terms “Council for TRIPS”, “Doha Declaration Implementation Decision”, “relevant health product”, “TRIPS Agreement” and “WTO Agreement”.

Clause 3 inserts a new section 50A to restrict the application of Part X to —

- (a) any contract for the supply of a patented product;
- (b) any licence to work a patented invention; and
- (c) any contract relating to any such supply or licence,

that was entered into or granted on or after 23rd February 1995 but before the date of commencement of the clause.

Clause 4 amends section 56 by inserting a new subsection (1A) to allow the Government and any party authorised in writing by the Government to import any relevant health product, and do anything in relation to any relevant health product so imported, for or during a national emergency or other circumstances of extreme urgency, if the Government has given the Council for TRIPS a relevant notification in relation to the relevant health product, so as to give effect to paragraph 2 of the Doha Declaration Implementation Decision and to paragraph 1 of Article 31*bis* of, and paragraph 2 of the Annex to, the TRIPS Agreement (as amended by the Protocol). The clause also amends section 56 —

- (a) to insert in subsection (4), in addition to the existing definition for “integrated circuit”, a new definition for the term “relevant notification”; and
- (b) to make a technical amendment to subsection (1) which is consequential to the insertion of new subsection (1A).

Clause 5(a) amends section 60 by inserting a new subsection (1A) to provide that the right under section 56 to use a relevant health product which is imported under the new section 56(1A) (inserted by clause 4(b)) does not include a right to export the relevant health product, so as to give effect to paragraph 3 of the Annex to the TRIPS Agreement (as amended by the Protocol).

Clause 5(b) amends section 60 by inserting a new subsection (3) to expressly empower a court that has terminated a right under section 56 to make such consequential orders as the court thinks necessary.

Clause 6 repeals and re-enacts section 62 to give effect to paragraph 3 of the Doha Declaration Implementation Decision and to paragraph 2 of Article 31*bis* of the TRIPS Agreement (as amended by the Protocol). Under the new section 62, generally, where an act is done under section 56, the Government will pay such remuneration to the patentee as may be agreed, or as may be determined by a method agreed, between the Government and the patentee having regard to the economic value of the patented invention or as may, in default of agreement, be determined by the court under section 58, which is the existing position. However, if the act is the import or subsequent use under the new section 56(1A) (inserted by clause 4(b)) of any relevant health product, the Government need not pay any such remuneration if the patentee has received or will receive any other remuneration in respect of that relevant health product.

Clause 7 amends section 66 by inserting a new subsection (5A) to provide that the defences against patent infringement under subsection (2)(g) and (i) will not apply to the import or sale of, or the offer to sell, any relevant health product produced for export to any country, other than Singapore, which is an eligible importing member of the World Trade Organisation, so as to give effect to paragraph 5 of the Doha Declaration Implementation Decision and to paragraph 4 of the Annex to the TRIPS Agreement (as amended by the Protocol). The clause also amends section 66 —

- (a) to insert in subsection (6), in addition to the existing definitions for “exempted aircraft”, “relevant aircraft, hovercraft or vehicle” and “relevant ship”, a new definition for the term “eligible importing member”; and

- (b) to make technical amendments to subsection (2)(g) and (i) which are consequential to the insertion of new subsection (5A).

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.
